

立法會
Legislative Council

LC Paper No. CB(2)1092/14-15
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

Minutes of the sixth meeting
held on Monday, 16 February 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon CHEUNG Kwok-che
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man
Hon Steven HO Chun-yin
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon James TO Kun-sun
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public Officers attending : Item I

Mr Christopher WONG, JP
Deputy Secretary for Food and Health (Food)1
Food and Health Bureau

Miss Diane WONG
Principal Assistant Secretary for Food and Health
(Food)2
Food and Health Bureau

Ms Phyllis KO
Senior Assistant Law Draftsman (II)1
Department of Justice

Miss Cindy CHEUK
Government Counsel
Department of Justice

Mr YU Tak-cheung
Assistant Director/New Buildings 1
Buildings Department

Mr YEUNG Chun-hoi
Senior Superintendent (Cemeteries & Crematoria)
Special Duties
Food and Environmental Hygiene Department

Ms Olga LAM, JP
Assistant Director (Estate Management) (Lands
Administration Office/Headquarters)
Lands Department

Ms Christine TSE
Assistant Director of Planning (Special Duties)
Planning Department

Clerk in attendance : Mr Colin CHUI
Chief Council Secretary (2) 4

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Ms Catherina YU
Senior Council Secretary (2) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

Action

I. Meeting with the Administration

[File Ref: FH CR 2/3751/07; LC Paper Nos. CB(3)740/13-14, LS66/13-14, CB(2)2121/13-14(01), CB(2)2141/13-14(01) CB(2)2338/13-14(07) to (08), CB(2)389/14-15(01) CB(2)431/14-15(02) to (04), CB(2)630/14-15(01) and CB(2)825/14-15(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to provide –

- (a) the number of sets of ashes being kept in the premises of the 81 undertakers of burials and their average storage period;
- (b) a list containing the names and addresses of private columbarium operators who had responded to the notice served by the Food and Environmental Hygiene Department under the administrative notification scheme and the number of niches under their operation;
- (c) written responses to the submissions from the Alliance for the Concern Over Columbarium Policy (LC Paper Nos. CB(2)747/14-15(01) and CB(2)856/14-15(01)); and
- (d) examples of provisions in legislation in which "shall not" or "must not" was used.

II. Any other business

3. There being no other business, the meeting ended at 12:45pm.

**Proceedings of the sixth meeting of the
Bills Committee on Private Columbaria Bill
on Monday, 16 February 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000750 - 001143	Chairman	<p>Opening remarks</p> <p>Members agreed to discuss the Administration's responses to the submission from 殯儀業業界 and issues raised by members at the meeting on 15 December 2014, followed by the clause-by-clause examination of the Bill. Matters relating to ash disposal procedures (LC Paper No. CB(2)825/14-15(01)) as well as summary of the framework and provisions of the Bill (LC Paper No. CB(2)431/14-15(04)) would be discussed when members examined the relevant clauses of the Bill.</p>	
001144 - 001928	Chairman Admin	Briefing by the Administration on its response (LC Paper No. CB(2)431/14-15(02)) to comments raised by 殯儀業業界 in its submission (LC Paper No. CB(2)389/14-15(01)).	
001929 - 002731	Chairman Dr Priscilla LEUNG Mr Albert CHAN Admin	<p>Enquiry of Dr Priscilla LEUNG and Mr Albert CHAN about ash disposal procedures provided under the Bill in the event of cessation of a columbarium operation.</p> <p>The Chairman said that the subject matter would be dealt with during the examination of the relevant clauses of the Bill.</p> <p>In response to Dr Priscilla LEUNG's concern about the regulation of undertakers of burials ("undertakers"), the Administration explained the present situation and the measures that the Administration would take to strengthen the regulation of temporary storage of ashes by undertakers as detailed in LC Paper No. CB(2)431/14-15(02). The Administration advised that for applications for an undertaker licence received in or after December 2008, temporary storage of ashes would not be allowed even if the applications were successful.</p>	
002732 - 003803	Chairman Dr Helena WONG The Deputy Chairman Admin	<p>The Administration's response to Dr Helena WONG's enquiries that –</p> <p>(a) a total of 112 undertaker licences were issued and there remained 81 undertakers</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>whose licences did not debar temporary storage of ashes within their premises; and</p> <p>(b) the Food and Environmental Hygiene Department ("FEHD") had taken into account the views of the relevant government departments, including that of the Planning Department, in considering applications for an undertaker licence. There were cases in which licences were not issued to undertakers whose premises were considered not suitable.</p> <p>Concerns of Dr Helena WONG and the Deputy Chairman that –</p> <p>(a) there might be loopholes in regulating operation of undertakers as some parts of the Bill were not applicable to them; and</p> <p>(b) storage of ashes in undertakers' premises might become long term and thus cause nuisance to the local community if it lacked clear guidelines for temporary storage.</p> <p>The Deputy Chairman's view that the Administration should consider whether it was necessary to restrict or revoke an undertaker licence following the introduction of the Bill.</p> <p>The Administration's response that –</p> <p>(a) it sought to contain the problem by capping the number of undertaker licences without restriction on temporary storage of ashes within their premises at 81. It would impose stringent renewal requirements and licensing conditions on an undertaker licence, including setting a cap on the capacity for temporary storage of ashes;</p> <p>(b) it would review, at a suitable juncture, the provision of service by undertakers for temporary storage of ashes and further tighten the renewal requirements and licensing conditions on an undertaker licence, if necessary;</p> <p>(c) undertakers were required to keep a register of the particulars of the deceased under section 10 of the Undertakers of Burials Regulation (Cap. 132CB) and FEHD would inspect the registers every three months and collect information on the amount of ashes kept half-yearly. There were around 22 000 sets of ashes being temporarily</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>stored by undertakers. The arrangement for keeping registers of ashes deposited for inspection by FEHD would be strengthened; and</p> <p>(d) the Administration had increased the capacity of FEHD's temporary storage facilities for ashes. The average storage time of ashes in undertakers' premises was about two years.</p> <p>At the request of Dr Helena WONG, the Administration would provide information on the number of sets of ashes being kept in the premises of the 81 undertakers and their storage period.</p>	Admin
003804 - 004000	Chairman Dr Priscilla LEUNG	In response to Dr Priscilla LEUNG's enquiry about whether a compensation fund would be set up to protect consumers from loss arising from the cessation of a columbarium operation, the Chairman said that the subject matter would be discussed during the examination of the relevant clauses of the Bill.	
004001 - 004639	Chairman Dr Helena WONG Admin	<p>The Administration's response to Dr Helena WONG's enquiry that as undertakers were already regulated under the Public Health and Municipal Services Ordinance (Cap. 132) and Cap 132CB, the Bill was not applicable to them except Part 7 of and Schedule 5 to the Bill which dealt with ash disposal procedures.</p> <p>The Chairman's view that there was a difference between the service nature of undertakers and that of public/private columbaria. The storage of ashes in an undertaker's premises was a transitional arrangement while the storage of ashes in a public or private columbarium was of a long-term nature.</p> <p>Dr Helena WONG's view that the Administration should increase the supply of public niches swiftly.</p>	
004640 - 005925	Chairman Admin Dr Helena WONG	<p>Dr Helena WONG's enquiry about whether concurrent amendments to provisions of Cap. 132 would be made.</p> <p>The Administration's response that it would be more pragmatic to first enact the Bill and tighten the renewal requirements and licensing conditions on undertaker licences issued under the regulatory system implemented pursuant to</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		Cap. 132. Further changes could be considered in the light of experience.	
005926 - 010630	<p>Chairman Mr LEE Cheuk-yan Dr Priscilla LEUNG Admin</p>	<p>Briefing by the Administration on its responses to issues raised by members at the meeting on 15 December 2014 (LC Paper No. CB(2)630/14-15(01)).</p> <p>Mr LEE Cheuk-yan's request for the Administration to provide a written response to the submissions from the Alliance for the Concern Over Columbarium Policy (LC Paper Nos. CB(2)747/14-15(01) and CB(2)856/14-15(01)), which should be discussed during the examination of the relevant clauses of the Bill.</p> <p>The Administration's response to Mr LEE Cheuk-yan's enquiry that as at 31 December 2014, a total of 141 operators had responded to the notice served by FEHD under the administrative notification scheme ("Notification Scheme"). Among them, 126 were from private columbaria listed on the Development Bureau ("DEVB")'s List (i.e. around 97.7% of the cases on the DEVB's List) and 15 were from those outside the DEVB's List.</p> <p>At the request of Mr LEE, the Administration would provide a list containing the names and addresses of the respondents to the Notification Scheme and the number of niches under their operation.</p> <p>View of Mr LEE Cheuk-yan and Dr Priscilla LEUNG that a compensation fund should be set up to safeguard consumer interest before the commencement of the Private Columbaria Ordinance ("the Ordinance").</p> <p>The Administration's response that –</p> <p>(a) it was not considered appropriate to adopt a levy collection scheme as such outlays would most likely be passed onto the consumers upfront. It would not deter operators who were minded to fly by night. On the other hand, under a false sense of security that the compensation fund would bail them out, consumers might become less alert to the risks associated with niche transactions involving heavy pre-payment.</p>	<p>Admin</p> <p>Admin</p>

Time marker	Speaker(s)	Subject(s)	Action required
		<p>(b) it was not equitable to have law-abiding operators shouldering the burden on behalf of those operators who chose to shirk their responsibility to maintain interred ashes; and</p> <p>(c) such a scheme, if any, would not be able to benefit those who purchased the niches prior to the commencement of the Ordinance and had not paid any levies. The Panel on Food Safety and Environmental Hygiene ("FSEH Panel") had asked the Administration for an update of its measures to safeguard consumer interest before the commencement of the Ordinance. The Administration would provide information in this regard to the FSEH Panel for consideration at its meeting in March 2015.</p>	
010631 - 010745	Chairman Dr Priscilla LEUNG	<p>Dr Priscilla LEUNG's view that the Administration should seriously consider setting up a compensation fund to safeguard consumer interest.</p> <p>The Chairman's view that the matter should be followed up by the FSEH Panel.</p>	
Clause-by-clause examination			
010746 - 011441	Chairman Admin	Examination of the long title of the Bill.	
011442 - 012147	Chairman Miss CHAN Yuen-han Dr Priscilla LEUNG Admin	<p>Examination of clause 1</p> <p>Miss CHAN Yuen-han's concern and the Administration's response regarding the reasons for the provisions mentioned in clause 1(3) (i.e. Part 4, Division 2 of Part 5, Part 10 and Schedules 2 and 3) to come into operation on the expiry of three months beginning on the day on which the Ordinance was published in the Gazette.</p> <p>Members agreed to scrutinize the provisions mentioned in clause 1(3) before proceeding to the examination of other clauses of the Bill.</p>	
012148 - 012618	Chairman Admin	Examination of Part 4 - Division 1 clause 10	
012619 - 012536	Chairman Admin	Examination of Part 4 - Division 1 clause 11(1)	
012537 - 013848	Chairman Dr Priscilla LEUNG Deputy Chairman Admin	<p>Examination of Part 4 - Division 1 clause 11(2)</p> <p>Dr Priscilla LEUNG's enquiry and the Administration's response regarding the reasons</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>for the terms defined in clause 10, which were used in Part 4, to come into operation on the expiry of three months beginning on the day on which the Ordinance was published in the Gazette.</p> <p>The Chairman's enquiry and the Administration's response regarding the discretion of the future Private Columbaria Licensing Board ("Licensing Board") in determining the term for which a licence, an exemption or a temporary suspension of liability ("specified instrument") for operating a private columbarium was issued, renewed or extended.</p> <p>View of the Deputy Chairman and the Chairman on the need for the Licensing Board to have discretion in determining the validity period of a specified instrument, given that the Licensing Board had already been empowered to issue, renew or extend a specified instrument under clause 11(1).</p> <p>The Administration's response that the Licensing Board would assess each application on its own merits. The Licensing Board should be allowed the flexibility of granting a specified instrument with a shorter validity period, where appropriate.</p>	
013849 - 014432	Chairman Admin	Examination of Part 4 - Division 1 clause 11(3) to 11(9)	
014433 - 015915	Chairman Dr Priscilla LEUNG Deputy Chairman Admin	<p>Examination of Part 4 - Division 1 clause 12</p> <p>Dr Priscilla LEUNG's enquiry and the Administration's response that the term "may not" had the same legal effect as "shall not" or "must not".</p> <p>The Deputy Chairman's concern that relevant departments should master information on unauthorized columbaria well before the licensing scheme was in place. The Administration's response that cases under which a notice had been served with regard to an unauthorized columbarium, or proceedings for prosecution of a person for committing an offence under the relevant provisions of the Town Planning Ordinance (Cap. 131), or an order served under the relevant provisions of the Buildings Ordinance (Cap. 123) were known within the Government.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
015916 - 020158	Chairman Dr Priscilla LEUNG Admin	Dr Priscilla LEUNG's request for some examples of similar provisions in other laws where "shall not" or "must not" was used. The Administration's explanation on the use of "shall not", "must not" and "may not" in law drafting.	Admin

Council Business Division 2
Legislative Council Secretariat
19 March 2015